

Introduced by Senator Speier

February 23, 2006

An act to add Section 9884.20 to the Business and Professions Code, and to add Section 1874.88 to the Insurance Code, relating to automotive repair.

LEGISLATIVE COUNSEL'S DIGEST

SB 1492, as introduced, Speier. Automotive body repair: insurance claims.

The Automotive Repair Act provides for registration and licensing of automotive repair dealers by the Bureau of Automotive Repair in the Department of Consumer Affairs. Existing law prohibits automobile insurers from requiring an insured to repair an automobile at a particular automotive repair dealer, and imposes various requirements on insurers in that regard and with respect to other related matters.

This bill would require an auto body repair dealer regulated by the bureau to submit information annually to the bureau regarding the street rate, as defined, charged for repairs of a vehicle at the dealer's shop. The bill would require the bureau to annually produce a report organizing the street rates submitted by dealers by ZIP Code, and to transmit that report to the Department of Insurance. The bill would require that department to make this information available to the public on its Web site and as otherwise appropriate. The bill would require the bureau to occasionally verify the information provided by dealers, and would provide for the imposition of civil penalties on dealers for certain associated violations.

This bill would also require the Department of Insurance to use the average street rate for a ZIP Code, as reported by the bureau, to attempt to resolve disputes between insurers and claimants over the

reasonable cost of repairing a vehicle. The bill would enact other related provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature hereby finds and declares all of
- 2 the following:
- 3 (a) It is generally accepted that a fair insurance claim
- 4 settlement is one that puts a claimant back into the position that
- 5 he or she was in prior to the loss.
- 6 (b) The typical claimant is unlikely to receive any significant
- 7 discount from posted hourly rates at an auto body repair dealer
- 8 because the typical claimant is not a repeat customer of a dealer
- 9 or possessed of other unusual characteristics that would generally
- 10 result in a dealer extending a significant discount from posted
- 11 hourly rates to a claimant.
- 12 (c) The transaction of an auto body repair should be viewed
- 13 from the perspective of a claimant as described in subdivisions
- 14 (a) and (b) when determining how to put a claimant back into the
- 15 position that he or she was in prior to the loss.
- 16 (d) Claimants, due to their lack of general experience with
- 17 auto body repairs, generally lack the information needed to know
- 18 whether they are being offered a fair settlement of an auto body
- 19 repair and are often heavily reliant on information provided by
- 20 auto body repair dealers and insurers to determine if a fair offer
- 21 of settlement is being made.
- 22 (e) For purposes of helping to determine what constitutes fair
- 23 claims settlement between claimants and an insurer, claimants
- 24 would benefit from additional information about labor rates that
- 25 are typically charged by auto body repair dealers in a given ZIP
- 26 Code, if provided from an unbiased source of information.
- 27 (f) Some insurers have been demanding that claimants pay any
- 28 amount per hour in excess of the insurer's proposed hourly labor
- 29 rate, thereby imposing substantial economic hardship on those
- 30 claimants who agree to pay for the additional costs of a repair or
- 31 forcing those claimants who cannot pay into costly and time
- 32 consuming claims settlement negotiations.

1 (g) Efficient and fair enforcement of California laws
2 necessitates a benchmark number from which a fair offer of
3 settlement may be calculated using unbiased evidence collected
4 from the free market.

5 (h) The calculation of this benchmark will enhance protection
6 of claimants, protect them from economic damage when unfair
7 offers of settlement are made, and help to ensure the fair
8 application of the law by protecting both claimants and insurers
9 against attempts to knowingly increase the costs of claims
10 beyond those costs that are reasonably necessary to effectuate
11 fair settlement of claims.

12 SEC. 2. Section 9884.20 is added to the Business and
13 Professions Code, to read:

14 9884.20. (a) An auto body repair dealer shall submit to the
15 bureau the street rate charged for repairs of a vehicle during the
16 prior 12-month period, as calculated pursuant to subdivision (b).
17 This information shall be submitted with the annual application
18 for registration with the bureau.

19 (b) "Street rate" shall mean the hourly labor rate posted by the
20 dealer for viewing by the public, provided that the cost of repair
21 estimates for jobs completed by the dealer's shop generally
22 reflect the posted hourly labor rate. A cost of repair estimate for
23 jobs completed by the shop shall be deemed to generally reflect
24 the posted hourly labor rate if the estimate uses an hourly labor
25 rate that is at least 90 percent of the posted hourly labor rate in
26 existence at the time the estimate was made. In order for a
27 dealer's street rate to be used by the bureau in the calculation of
28 the average street rate in a ZIP Code, as set forth in subdivision
29 (e), 90 percent or more of the cost of repair estimates used to
30 calculate the dealer's street rate must be at or above 90 percent of
31 the posted hourly labor rate in existence at the time the estimate
32 was made. Cost of repair estimate agreements between the dealer
33 and an insurer or any commercial entity may be used to calculate
34 the street rate for a shop provided the hourly labor rate actually
35 charged pursuant to an agreement between an insurer or
36 commercial entity is at least 90 percent of the posted hourly rate
37 of the dealer. If the dealer changed its posted hourly labor rates
38 during the prior 12-month period, a street rate shall be calculated
39 for each time period in which hourly labor rates were applicable
40 and the street rate reported to the bureau shall be an average

1 weighted by the number of months in which the street rate was
2 applicable.

3 (c) If the street rate cannot be calculated for a shop using the
4 standards set forth in this section, the shop shall be excluded
5 from the calculation of an average street rate by ZIP Code, as
6 described in subdivision (e), but the shop shall have met its duty
7 to submit its street rate to the bureau provided it has otherwise
8 complied with this section.

9 (d) The bureau shall, from time to time as it deems necessary,
10 compare the street rate submitted by a dealer with the evidence
11 used to calculate the street rate submitted by the dealer to ensure
12 that the evidence supports the information submitted to the
13 bureau. A dealer shall not refuse to give the bureau invoices and
14 other information deemed necessary by the bureau to validate the
15 street rate submitted by the dealer and a refusal to provide this
16 information shall subject the dealer to the imposition of a civil
17 penalty of one thousand dollars (\$1,000) by the bureau. The
18 knowing submission of a street rate that is not justifiable
19 pursuant to subdivision (b) shall result in the bureau excluding
20 the street rate of the shop from the calculation of an average
21 street rate for a ZIP Code pursuant to subdivision (e) for a period
22 of two years and shall result in a civil penalty imposed by the
23 bureau of up to one thousand dollars (\$1,000). Inadvertent or
24 simple mistakes of calculation in the development of the street
25 rate by a shop shall not be grounds for exclusion from the ZIP
26 Code survey set forth in subdivision (e) and the bureau may
27 waive or reduce the penalty for those errors.

28 (e) The bureau shall produce a report organizing street rates
29 by ZIP Code and shall, for each ZIP Code, calculate the average
30 hourly street rate that exists for each ZIP Code by adding the
31 street rate of each dealer in a ZIP Code and dividing the number
32 of dealers used to calculate the street rate. The bureau shall
33 electronically transmit the average street rate data by ZIP Code to
34 the Department of Insurance by January 15 of every year, and
35 this data, as well as the names and addresses of all shops used to
36 calculate the average street rates for a ZIP Code, shall be made
37 available to the public via the Web site of the Department of
38 Insurance and otherwise as deemed appropriate by that
39 department.

1 SEC. 3. Section 1874.88 is added to the Insurance Code, to
2 read:

3 1874.88. (a) The department shall use the average street rate
4 for a ZIP Code calculated by the Bureau of Automotive Repair
5 pursuant to Section 9884.20 of the Business and Professions
6 Code, as well as any other credible evidence that is accepted by
7 the department, to attempt to resolve a dispute between an insurer
8 and a claimant over the reasonable cost of repairing a vehicle and
9 for purposes of its enforcement of this code. A court may use the
10 average street rate for a ZIP Code calculated by the bureau, and
11 other credible evidence, for purposes of settling a disputed claim.

12 (b) The hourly labor rate of a repair proposed by a claimant to
13 an insurer based upon an estimate of repair from an auto body
14 repair dealer shall be presumed reasonable and fair for purposes
15 of claims settlement if both of the following apply:

16 (1) The hourly labor rate on the estimate is the same or less as
17 the auto body repair dealer's street rate.

18 (2) The hourly labor rate on the estimate is not more than 10
19 percent above the average street rate for a ZIP Code that is the
20 same as the ZIP Code of the auto body repair dealer that the
21 claimant presents as a possible source of repair.

22 (c) Nothing in this section shall be deemed to define a labor
23 rate presented on an estimate of repair by a claimant to an insurer
24 as unreasonable or unfair if it is in excess of the presumed
25 reasonable and fair labor rate as provided in subdivision (b). In
26 evaluating whether a labor rate is fair and reasonable when it is
27 more than 10 percent above the average street rate in a ZIP Code,
28 a labor rate shall also be evaluated based upon special
29 characteristics of the proposed repair, including, but not limited
30 to, the warranty obligations of the claimant under a lease,
31 manufacturer specifications for gaps between body parts, heating
32 and cooling of metals during repair and whether or not heating
33 and cooling adversely impacts the crashworthiness of the vehicle,
34 paint matching, and assembly or disassembly of components and
35 any other characteristics of the repair that might reasonably be
36 necessary to put the claimant back into the position that the
37 claimant was in prior to the loss.